

IN THE SENATE OF THE UNITED STATES.

MAY 15, 1858.—Ordered to be printed.

Mr. CLARK submitted the following

REPORT.

The Committee on Claims, to whom was referred the memorial of Hezekiah Miller, report:

The papers in this case present the following material facts, viz:

Mr. Miller, in 1828, was a clerk in the office of the Commissioner of Indian Affairs, at a salary of \$1,000 per annum. Towards the close of that year Mr. Fenner, another clerk in the same office, at a salary of \$1,400 per annum, resigned, and Miller applied for, and was recommended to the Secretary of War for, promotion to the higher grade of salary thus made vacant. Mr. McKenna, then at the head of the Indian office, states that he made application to the Secretary of War at the time for the promotion of Miller to the vacant salary, and that the Secretary acquiesced in his views, and decided that it should be so. No order, however, appears to have been entered upon the books of the department to that effect, and the salary continued to be paid at the rate of \$1,000 a year, without remonstrance on the part of Miller, until 1830, when it was raised to \$1,150. In 1831 it was reduced to \$1,091 50, and in 1832 it was again fixed at \$1,000 a year. In 1833 he was finally promoted to the \$1,400 salary. His claim is for the payment of the difference between the amount he actually received and the amount he would have received had the increased salary been allowed him from the date of the resignation of Mr. Fenner, in 1828, up to the time when he obtained it in 1833, amounting to \$1,358 44.

In the opinion of this committee, the facts present no ground of claim against the government. It may be inferred from Mr. McKenna's statement that, at the time, the Secretary acquiesced in the suggestion of the propriety of promoting Mr. Miller, and contemplated making an order to that effect, but, for some reason not explained, he did not carry that intention into effect. No such order was made, and Mr. Miller continued to occupy his place, without any increase of salary, for several years, and, so far as appears, without complaint or remonstrance that any portion of his just compensation was withheld from him. It is not alleged that any demand was made upon the department for this money, nor was there any application to Congress until after the lapse of more than twenty years from the time it is now claimed to have been due. There are other grounds, however, upon which the committee think that claims of this kind should not be regarded with favor.

By the third section of the act of 1818, (3 Stat., 446,) the Secretary of War was "authorized to employ, for the office of the War Department, one chief clerk, whose compensation shall not exceed \$2,000 per annum; three clerks, whose compensation shall not exceed \$1,600; five clerks, whose compensation shall not exceed \$1,400 each; eight clerks, whose compensation shall not exceed \$1,000 each; and five clerks, whose compensation shall not exceed \$1,000 each;" and "for the office of the Superintendent of Indian Affairs, one clerk, whose compensation shall not exceed \$1,150 per annum; one clerk, whose compensation shall not exceed \$1,000 per annum; and one clerk, whose compensation shall not exceed \$800." And by the act of 1827, (4 Stat., 233,) an additional clerk, at a salary of \$1,000, was authorized to be employed in the Indian bureau.

The memorialist states that he "was, at the time stated, and is yet, a clerk in the Indian bureau," in which there does not appear to have been any authority of law for allowing any clerk a compensation exceeding \$1,150 per annum. Mr. Fenner, to whose salary Mr. Miller claims to have been assigned, was a clerk in the "office of the War Department," in which salaries of that amount were allowed; but it is not pretended that Mr. Miller was ever transferred to that office; indeed, the contrary appears from his own statement. It is evident, therefore, that the Secretary, in point of fact, whatever his intentions or wishes might have been, did not, and could not, assign to him the salary claimed, because he did not employ him in a service for which the law authorized that amount of compensation to be paid.

It is alleged that the estimates for the War Department for 1839 were made up soon after Mr. Fenner's resignation, in which (that salary not having been assigned to any one else,) a reduction of \$400 was made, and that that sum was restored when the salary was "allotted" to him. The fact that the gross appropriation for the service of the War Department was increased affords no ground for this or any like claim. Under the then existing law, the Secretary had unlimited discretion in appropriating the clerical duties in the bureau of his department, and in the assignment of the salaries allowed to them respectively. It was also within the scope of his discretion to change the arrangement as often as he deemed it expedient to do so. If any clerk felt himself aggrieved in the assignment of duties to him, or in the amount of salary allowed, his proper remedy was to resign his place. The law having confided to the heads of the departments the power to fix the compensation of clerks, (within prescribed limits,) every clerk who accepted employment under them must be presumed to have agreed to accept, as a full compensation for his services, the salary allowed and paid to him at the time. Will Congress, at this late day, undertake to revise the manner in which that discretion was exercised by the heads of departments for more than half a century, and to inquire into and remedy all alleged cases of inequality and hardship in the amount of service required, or of compensation allowed? The impropriety and impracticability of such a proceeding is a sufficient answer to this claim, even if it were not barred by the fact already alluded to, that the salary claimed exceeds the amount which the Secretary was allowed by law to pay for the service performed by Mr. Miller.